

July 31, 1998

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION.

SUBJECT: Department of Development and Environmental Services File No. **L97P0043**

LAZY B & W RANCHETTES
SEPA Threshold Determination Appeal and
Preliminary Plat Application

Location: West of Military Road South and east of 32nd Avenue South,
if extended, south of proposed South 376th Place

Applicant: Richard Schroeder, *represented by*
Stuart Scheuerman
ESM, Inc.
720 South 348th Street
Federal Way, WA 98003
Telephone: (253) 838-6113
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Appellants: Rory and Lynne Luce, *represented by*
Rhys Sterling,
Attorney At Law
P.O. Box 218
Hobart, Washington 98025
Telephone: (425) 391-6650
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Department: **Gary Kohler**
Representative: Department of Development & Environmental Services/LUSD
900 Oakesdale Avenue SW
Renton, Washington 98055
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SUMMARY OF RECOMMENDATIONS:

Preliminary Plat Application:

Department's Preliminary:	Approve, subject to conditions
Department's Final:	Approve, subject to conditions (modified)
Examiner:	Approve, subject to conditions (modified)

SEPA Appeal:

Department's Preliminary:	Deny appeal
Department's Final:	Deny appeal
Examiner:	Deny appeal

PRELIMINARY MATTERS:

Application or petition submitted:	October 14, 1997
Notice of complete application:	November 14, 1997
Notice of appeal received by Examiner:	May 20, 1998
Statement of appeal received by Examiner:	May 20, 1998

EXAMINER PROCEEDINGS:

Pre-Hearing Conference:	June 18, 1998
Hearing Opened:	July 23, 1998
Hearing Closed:	July 23, 1998

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

ISSUES ADDRESSED:

- Agricultural uses
- Compatibility of uses
- Downstream impacts
- Filled land
- Groundwater
- Infiltration
- Non-conforming use (agricultural)
- Soil characteristics
- Stormwater detention
- Water pollution
- Water quality

FINDINGS, CONCLUSIONS, AND DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. **General Information.**

Owner/Developer:	Richard Schroeder Happy Valley Land Company, LLC P. O. Box 1324 Issaquah, WA 98027
Engineer:	Loran T. Petersen ESM, Inc. 720 S. 348 th Street Federal Way, WA 98003
Location:	West of Military Road Sand east of 32 nd Avenue South, if extended, south of proposed S 376 th Place
STR:	Section 34-21 04 Willamette Meridian
Zoning:	R-6
Acreage:	5.37 acres
Density:	5.4 dwelling units per acre
Typical Lot Size:	5,500 square feet
Proposed Use:	Single family - detached
Sewage Disposal:	Lakehaven Utility District
Water Supply:	Lakehaven Utility District
Fire District:	King County Fire District No. 39
School District:	Fife School District
Complete Application Date:	November 14, 1998

2. **Proposal.** Happy Valley Land Company, LLC (the “Applicant”) proposes to subdivide a 5.37-acre parcel into 29 single family residential building lots. With an average lot size of approximately 5, 500 square feet, this proposed subdivision will achieve a 5.4 dwelling unit per acre density—acceptably within the density range authorized by the R-6 zoning which applies to this property. A preliminary plat drawing which illustrates the proposal is entered in this hearing record as Exhibit No. 7 and is attached to the Preliminary Report to the Examiner dated July 7, 1998 by the Department of Development and Environmental Services (hereinafter, the “Department” or “DDES”), entered as Exhibit No. 2.

3. **SEPA Threshold Determination Appeal Filed.** On May 12, 1998, the Department issued a threshold determination of nonsignificance (DNS) for the proposed development. Rory L. and Lynne B. Luce, owners of the southerly abutting property, filed timely appeal from that determination on May 13, 1998. In their appeal, the Luces argue that their water quality and water rights will not be protected adequately; that, therefore, the proposed development will impose an unmitigated significant adverse impact on the water and water rights they enjoy; and that, therefore, the threshold determination issued by the Department is “clearly erroneous.” The Appellants ask that an environmental impact statement (EIS) be prepared in order to generate

sufficient information upon which a less environmentally adverse decision may be made; or, in the alternative, to simply remand the matter to the Department for further study.

4. **Department Recommendation.** DDES enters the following recommendations:

- A. Regarding the proposed plat, the Department recommends granting preliminary approval, subject to the fifteen conditions of final plat approval stated on pages 7 through 11 of the Department's preliminary report to the Hearing Examiner (Exhibit No. 2), EXCEPT that the Department suggests amending recommended condition no. 7.E relating to the proposed surface drainage infiltration pond. In its amended recommendation, the Department would leave the "exact details and location of the infiltration pond to be determined at engineering review," rather than relying solely upon the preliminary plat drawing (Exhibit No. 2) and the Applicant's conceptual drainage plan (Exhibit No. 12).
- B. Regarding the SEPA threshold determination appeal, the Department's final recommendation is unchanged from its initial threshold determination; that is, affirm the DNS and deny the appeal.

5. **Facts At Issue.** The Appellant's case rests upon certain assertions of fact relating to water rights, an alleged easement, and a protected water line. In essence, the Appellants argue that neither the Applicant, nor DDES (nor, for that matter, the Examiner) have any authority to disturb these asserted legal protections. These built features and legal protections—the pipe, the easement, the water rights, and the headwork of a water conveyance system—are intended to benefit the southerly abutting Luce property which comprises 8.8 acres. The Luce property is used agriculturally, raising beef cattle (Herefords—see Exhibit Nos. 13-14), horses and chickens. The water rights and conveyance features sought to be protected by the Appellants sustain an existing "livestock pond" which the Appellants use for animal watering and irrigation. They also rely upon ground water for domestic use. The Luce property is zoned for residential, not agricultural use. However, the agricultural use predates¹ the current R-6 zoning.

- A. **Water Rights.** In 1959 the State of Washington issued Stanley E. Luce a certificate of surface water right for 0.11 cubic feet per second (CFS) for domestic supply and irrigation. The "point or points of diversion" of the appropriated waters were from an "unnamed stream" located within the northwest quarter of the southwest quarter of section 34, township 21 north, range 4 east, W.M.

Neither the Department nor the Applicant contest the Appellant's assertion of water rights.² However, it is the contention of the Appellants that the Applicant's preliminary plat drawing and conceptual drainage plan, both recommended for approval by DDES, wholly ignore those water rights. Specifically the proposal would move the pipeline (while at the same time enlarging it to meet King County Surface Water Management Standards), would fill (bury) the wetland which serves as a collection area for water received by the Luce property, and might,

¹ Presumed, but not proven, to be continuous use.

² Some later asserted water rights are documented in this hearing record as mere "claims."

further, jeopardize the quality of water received by the Luce property by virtue of the proposed location for the Lazy B & W Ranchettes' infiltration pond.

The applicant argues that the historical record of water rights claims and water rights issued does not authorize livestock water as a benefited use.

- B. **Pipeline.** The Appellants adamantly oppose any attempt to relocate their existing water pipeline (and asserted easement) across the Lazy B & W Ranchettes property. Nor do the Luces consent to the replacement of the existing pipeline. They argue that neither the project proponent nor DDES can unilaterally dictate to them that the water pipeline (and asserted easement) must be relocated to lie within new street rights-of-way.

Both the Department and the Applicant acknowledge the existing pipeline (which the Appellants regard as part of a collection and conveyance system related to the exercise of their water rights). However, the Department has approved relocation of the pipe and has required an increase in the size of the pipe in order to satisfy King County Surface Water Management Drainage Manual Standards. The pipe presently varies between 8 and 10 inches in diameter. A replacement pipe installed pursuant to County standards would be 18 inches in diameter.

In the same year that the Luces successfully filed their water rights (1959), the Washington State Department of Transportation appropriated that portion of the (then) Luce property now known as the Lazy B & W Ranchettes property. In the judgment and decree (State v. Morton, No. 533566) the King County Superior Court ordered adjudged and decreed, among other things, that

Respondents Luce and their successors in interest shall retain the right to use, operate, maintain and replace the existing water line over and upon the property appropriated herein west of Military Road.

Rory Luce, grandson of Stanley E. Luce, now claims to be the successor in interest with respect to that pipeline today. No party in this proceeding contests that claim.

- C. **Wetland/Cachement/Diversion Swales.** The Appellants argue that, in order to exercise their water rights, it is necessary for them to rely upon the wetland and ancillary "diversion" swales as a means of collecting and draining upstream waters to their stock pond. As noted above, the Department and the Applicant do not contest the water rights asserted by the Luces. However, the Lazy B & W Ranchettes preliminary plat design and conceptual drainage design would eliminate these land features upon which the Luces rely, or believe they must rely, in order to enjoy their water rights. The Luces do not consent to such actions and argue that none of these proposed actions may occur in the absence of their consent.

- D. **Easement.** The Appellants argue that the pipeline discussed in Finding 5.B, above, constitutes the centerline of an easement which benefits their property. The best one might say about the King County Superior Court's decree of 1959 regarding this matter is that it is vague. No easement is mentioned. Case law cited by the Appellants suggests that the right to use, operate, maintain and replace an existing water line carries with it an easement which enables the easement beneficiary to establish, maintain, operate, and replace the pipeline. Further, case law cited by the Appellants suggests that the easement may not be altered without the mutual consent of both the easement owner and the land owner.

While not responding to these assertions of legal authority, the Department and the Applicant disagree with the Appellants that any such easement exists. For their part, the Appellants do not cite any court order or recorded easement. Rather, the Appellants rely upon the historical claims of the Luce family, comprised of a 1985 letter from Stanley E. Luce (grandfather of Rory Luce), and the recollections of Appellant Rory Luce. The Applicant disagrees with the Appellant's interpretation of the Stanley Luce letter with respect to the meaning of his reference to "a right of way across the property of 30' wide going north." The Applicant argues that this 30-foot-wide "right-of-way" refers to an access easement granted by the State Department of Transportation to the remainder Luce parcel abutting the *north* boundary of what is now known as Lazy B & W Ranchettes property. The Department does not respond to this evidence or these arguments.

Exhibit No. 13-13 is an unrecorded survey drawing which identifies the location of the 30-foot-wide easement asserted by the Appellants as necessary to the installation and maintenance of the 10-inch concrete culvert (referred to in this report as "pipeline").

- E. **Infiltration Pond Location.** The Applicant initially proposed locating the Surface Water Management infiltration pond designed to serve Lazy B & W Ranchettes subdivision at a location 40 feet up-gradient from the Luce livestock/irrigation pond. The Department, initially agreeing with that proposal, now suggests that a 100-foot setback would be more appropriate in order to protect ground water pollution from (principally) soluble heavy metals. The preponderance of evidence in this hearing record suggests that heavy metals are typical of storm run-off from developed urban areas, that they accumulate in the flesh of livestock, and that such contaminated livestock may be unhealthful, or at least objectionable, to human consumers. The hearing record does not, however, contain information which would suggest that the bioswale and infiltration cleansing system conceptually approved by the Department would fail to keep such contaminants or pollutants below significant and adverse levels.

These additional findings are relevant to the infiltration pond placement location:

- The water quality experts representing both the Applicant and the

Appellants, both testified that the Seattle-King County Department of Public Health regulations are well founded.³ In this case, the soils in the area are sandy/ porous. This characteristic makes for excellent infiltration of surface waters. However, the (heavy metals) filtration capacity of sandy soils is unclear from this hearing record. From this debate comes the Department's modified recommendation described in Finding No. 4.A, above; to wit, that the final location of the Lazy B & W Ranchettes infiltration pond should not be finally determined until the engineering review phase, which always follows preliminary plat approval.

- The hearing record contains considerable evidence regarding the safe upper level of some mineral elements in drinking water for livestock. It does not, however, contain any evidence that the proposed development, given the bio-swale and infiltration conceptual drainage plan proposed, will significantly or adversely affect the quality of water enjoyed by the Luce livestock today. The Appellants' expert (Kvam) testifies that it could adversely affect water quality. However, he also testifies that by moving the infiltration pond westward (as suggested by the Department) that the potential impact could be mitigated. While not necessarily agreeing with Kvam's assertions regarding the initially proposed infiltration pond location, the Applicant's water quality expert (Biggerstaff) agrees that westward movement of the infiltration pond could solve any possible water quality threat, but disagrees regarding the distance necessary. Kvam suggests a 100-foot westward shift of the pond; Biggerstaff, a 50-foot shift.
- The Department's in-hearing suggestion called for a 100-foot westward movement of the infiltration pond to proposed lot nos. 5, 6, and 7. This shift in infiltration pond location would not only increase the distance between the Lazy B & W Ranchettes infiltration pond and the Luce livestock pond, but also would move the infiltration **down-gradient** from the livestock pond. A compromise location somewhere between a fifty-foot and 100-foot westward relocation of the infiltration pond might require some additional investigation of soils types and topography. Due to the soils types extant on the B & W Ranchettes property, the Applicant expresses concern that the further westward the infiltration pond is moved, the less infiltrative capacity it will have. That testimony is uncontested and, in fact, is supported by the soils investigations of the property conducted on behalf of the Applicant (see Exhibit No. 18).

6. **Applicant's Position.** The Applicant's opposition to the SEPA threshold determination appeal is clear from the preceding findings. Regarding the proposed plat, the Applicant accepts the Department's recommendation as stated in Finding No. 4.A, above.
7. **Department Report Adopted.** Except as noted above, the facts and analysis contained in the Land Use Services Division Preliminary Report dated July 7, 1998 are correct and are

³ This testimony comes in response/acknowledgment regarding the SKDPH regulation that requires septic tanks to be set back 100 feet from domestic water wells. This regulation is based upon the filtrative capacity of soils.

incorporated here by reference. A copy of the Land Use Services Division report will be attached to those copies of the examiner's report which are submitted to the King County Council.

8. **Standard of Review.** Section E of the Division's July 23, 1998 Preliminary Report to the King County Hearing Examiner (Exhibit No. 2) cites the scope and standard of review to be considered by the Examiner. The Division's summary is correct and will be used here. In addition, the following review standards apply:
 - a. WAC 197-11-350(1), -330(1)(c), and -660(1)(3). Each authorize the lead agency (in this case, the Land Use Services Division), when making threshold determinations, to consider mitigating measures that the agency or applicant will implement or mitigating measures which other agencies (whether local, state or federal) would require and enforce for mitigation of an identified significant impact.
 - b. RCW 43.21C.075(3)(d) and KCC 20.44.120 each require that the decision of the Responsible Official shall be entitled to "substantial weight". Having reviewed this "substantial weight" rule, the Washington Supreme Court in Norway Hill Preservation Association v. King County, 87 Wn 2d 267 (1976), determined that the standard of review of any agency "negative threshold determination" is whether the action is "clearly erroneous". Consequently, the administrative decision should be modified or reversed if it is:

...clearly erroneous in view of the entire record as submitted and the public policy contained in the act of the legislature authorizing the decision or order.
9. **Conclusions Adopted As Findings.** Any portion of any of the following conclusions which may be construed as a finding is incorporated here by reference.

CONCLUSIONS:

A. SEPA THRESHOLD DETERMINATION APPEAL CONCLUSIONS:

1. Although the livestock aspect of the pond protection sought by the Appellants is somewhat unusual among SEPA appeals, the elements of this debate are common and ordinary: soils types, infiltration capacity, water quantity, water quality, and so on. These are the topics of nearly every preliminary plat review. Nor is there anything particularly unusual or unique about the pattern of soils and topography and water in and near the subject property. These environmental features are typical of King County and this particular area within King County.
2. Further, although the issues raised in this proceeding are significant and dear to the Appellants, they do not rise to the scale of significance which typically warrants EIS review. However, because they are common and ordinary issues which arise through the review of a common and ordinary plat, they may be addressed nonetheless; and, in fact, *are* addressed (by the conditions of final plat approval stated below).
3. As noted in Finding No. 8, above, the burden of proof falls on the Appellant in a

threshold determination appeal. Considering the preponderance of the evidence, the Appellant has not successfully borne that burden in this case. Considering the above findings of fact and the entire hearing record, it must be concluded that the Division's threshold determination in this matter is not clearly erroneous and therefore will not be reversed.

The presentation of issues, questions and concerns is not sufficient to overturn a threshold determination. Rather, the determination (and the appeal review of that determination) must be based upon the preponderance of the evidence. The preponderance of the evidence in this case supports the Division's determination.

4. The issues raised by the Appellant are valid reasons for concern. However, they do not approach the magnitude requisite for a Determination of Significance.
5. In addition, the following conclusions apply:
 - a. There is no indication in the record that the Division erred in its procedures as it came to its threshold declaration of non-significance. Rather, the Appellant differs with the Division's assessment of impacts or the probability of potentially adverse impacts. Speculation with respect to potential impacts cannot prove a probable significant impact that requires the responsible agency to be overruled or to alter its initial determination. As noted in the Findings above, the Appellants have amply shown the importance of water quality, but have not shown that King County Surface Water Manual design standards fail to protect water quality.
 - b. Although the Appellant argues that the information on which the Division based its determination was insufficient, there is no adequate demonstration that the information on which the Division based its determination is actually erroneous.
 - c. There is a substantial amount of information in the record regarding the various impacts which have been asserted by the Appellant. The Division has not been unaware of these issues and has investigated (and reinvestigated) them, but has arrived at conclusions which differ from the Appellant's. The Division, having had access to the variety of issues and points of view and information expressed by the Appellant and others, maintains its original determination of non-significance. The Division's judgment in this case must be given substantial weight.
 - d. In view of the entire record as submitted and in view of the State Environmental Policy Act, the Division's decision is not clearly erroneous and is supported by the evidence.

B. PRELIMINARY PLAT CONCLUSIONS:

1. **Water Rights.** The Appellants are correct about one thing for certain: This Examiner does not have authority or jurisdiction to declare easements that are not clearly shown or

documented or to adjudicate water rights claims. For that reason, these issues are not finally resolved by this report and decision.

- a. **Pipeline and Pipeline Easement.** The record demonstrates rather well that the Appellants have a right to repair and maintain or replace the existing pipeline in its present location. No complete legal review has been completed here. However, the case law cited by the Appellants appears to support their contention that the pipeline cannot be altered in any way without their permission.

The argument becomes more hazy, however, when shifted to the easement right which the Appellants assert to be associated with the pipeline. The Appellants have cited case law and evidence which supports their claim to a 30-foot-wide easement -- a claim which might even be further extended to the wetland which functions as a "headwater collector" at the north end of the existing pipeline. However, the evidence which supports the Appellants is not so clearly established and recorded as to make these claims readily apparent to any person or, for that matter, to any local government administrator. Following the Appellants' own advice, they will not be ruled upon here. Rather, the conditions of final plat approval set out below require that these issues be resolved (*however* they may be resolved -- by negotiated or mediated agreement, settlement, contract, court order and decree, or whatever) **before** engineering review approval is granted. DDES Staff has testified that the preliminarily approved plat can be revised (perhaps at the cost of losing proposed building lots) in response to whatever the final dispute resolution requires.

- b. **Infiltration Pond Location.** When the proposed infiltration pond is moved westward, the elevation becomes lower (which is good), but the soils become less pervious (which is not good). There are two proposals on the table. One would move the presently proposed infiltration pond (as shown in Exhibit No. 7) 50 feet westward; the other, 100 feet westward -- to the west boundary of the subject property. Because moving the infiltration pond 100 feet westward would place it *below* the elevation of the Luce pond nearby, it would be ideal for the Appellants' interests (but would lose infiltration capacity). A 50-foot westward movement of the proposed pond location would achieve additional desirable setback from the Luce pond, but (based upon the evidence in this hearing record) cannot definitely be assured of being *below* the Luce pond elevation.

Thus, there are three factors which must be juggled to obtain an optimal infiltration pond location: a) *distance from the Luce pond*; b) *soils permeability (infiltration capacity)*; and, c).*elevation*. Final plat approval Condition No. 7, below, provides the DDES engineering staff opportunity to **optimize** these three variables. This is a task which may be accomplished solely by DDES Staff, (engineering and geology), based upon information DDES obtains from its own sources and records as well as information it may require from the Applicant's bona fide consultants. This is an engineering decision -- **optimization of the three variables -- distance, elevation, and permeability** -- and should not be

subject to negotiation with any party. Based upon this understanding and this "*rule of optimization*", the best outcome for all parties and the environment will be the one chosen by DDES Engineering Review. They make these kinds of judgments routinely. The only thing unusual in this case is the necessity of my writing all these conclusions.

2. These conclusions (and the recommendations below) shall not be construed as endorsement of the Luce water rights or claims, nor as endorsement of any Luce easement claim. Rather, these conclusions and the following conditions underscore the necessity of resolving these issues prior to engineering plan approval.
3. Based upon the whole record, and according substantial weight to the determination of environmental significance made by the Land Use Services Division, it is concluded that approval of this subdivision as recommended below would not constitute a major action significantly affecting the quality of the environment. All evidence of environmental impact relating to the proposed action and reasonable alternatives to the proposed action have been included in the review and consideration of this action.
4. If approved subject to the conditions recommended below, the proposed subdivision will comply with the goals and objectives of the Comprehensive Plan, Subdivision and Zoning Codes, and other official land use controls and policies of King County.
5. If approved subject to the conditions recommended below, this proposed subdivision will make appropriate provision for the public health, safety and general welfare and for drainage ways, streets, other public ways, water supply, and sanitary wastes; and it will serve the public use and interest.
6. The conditions recommended in the Land Use Services Division's Preliminary Report as amended below are in the public interest and are reasonable requirements.

DECISION ON SEPA APPEAL:

DENY the appeal of Rory and Lynne Luce on the appeal of the SEPA threshold determination.

DECISION ON PRELIMINARY PLAT:

GRANT preliminary approval to the proposed plat of LAZY B & W RANCHETTES, as shown in Exhibit No. 7 and Exhibit No. 12; SUBJECT TO the following conditions:

1. Compliance with all platting provisions of Title 19 of the King County Code.
2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication which includes the language set forth in King County Council Motion No. 5952.

3. The plat shall comply with the base density requirements of the R-6 zone classification. All lots shall meet the minimum dimensional requirements of the R-6 zone classification or shall be as shown on the face of the approved preliminary plat, whichever is larger, except that minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Department of Development and Environmental Services.
4. The applicant must obtain final approval from the King County Health Department.
5. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards established and adopted by Ordinance No. 11187, as amended (1993 KCRS). (A variance for intersection spacing, L97V0158, was approved on February 17, 1998).
6. The applicant must obtain the approval of the King County Fire Protection Engineer for the adequacy of the fire hydrant, water main, and fire flow standards of Chapter 17.08 of the King County Code.
7. Final plat approval shall require full compliance with drainage provisions set forth in King County Code 9.04. Compliance may result in reducing the number and/or location of lots as shown on the preliminary approved plat. The following conditions shall apply.
 - A. Drainage plans and analysis shall comply with the 1990 King County Surface Water Design Manual and applicable updates adopted by King County. DDES approval of the drainage and roadway plans is required prior to any construction.
 - B. Current standard plan notes and ESC notes, as established by DDES Engineering Review, shall be shown on the engineering plans.
 - C. The following note shall be shown on the final recorded plat:

“All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings # _____ on file with DDES and/or the King County Department of Transportation. This plan shall be submitted with the application of any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with plans on file.”
 - D. The Conceptual Drainage Plan proposes one hundred percent on-site infiltration for the developed plat. All infiltration designs shall comply with the standards of the SWDM unless otherwise approved by a SWDM variance. The infiltration pond shall be more westward (from the location shown on the Conceptual Drainage Plan) as far as possible while still achieving this standard.

- E. The conceptual drainage plan proposes an infiltration pond for collection of stormwater runoff from all interior roadways. All individual lots are proposed to use individual infiltration systems. Percolation tests and soil logs will be performed on all proposed lots during the engineering design phase of the plat. For those lots which do not meet the minimum requirements for infiltration, drainage must be conveyed to the infiltration pond and the pond shall be sized to include these lots accordingly. The infiltration pond must be located along the south boundary of the subject property in a manner consistent with the "rule of optimization" as described in Conclusion No. 1.b., above..
- F. The subject property is located within the East Branch of the Hylebos Creek Drainage Basin and also within the Supplemental On-site Detention Standard area. Stormwater runoff from all new impervious surfaces, which are not infiltrated, shall be collected by a retention/detention facility. The facility shall be designed to reduce post-develop flow duration to pre-develop levels for all flows greater than 50 percent of the 2-year event and less than the 50-year event. In addition, the 100-year post-development peak flow shall be reduced to the 100-year pre-development level.

It is recommended that a calibrated continuous flow simulation model such as HSPF be used for this analysis. If a continuous flow model cannot be used, design the new on-site R/D facilities such that the post-develop 2-year runoff is released at a maximum of 50 percent of the pre-developed 2-year rate, the post-developed 10-year rate at the pre-developed 2-year rate, and the post developed 100 –year rate at the pre-developed 10-year rate, all for a 24-hour design event. The calculated storage volume should be increased by a safety factor of 30 percent.

- G. Per Core Requirement No. 3 of the SWDM, biofiltration swales are required for this project for treatment of stormwater runoff.
- H. The dispute between the Applicant and the southerly abutting property owner (Luce) remains unresolved regarding movement and replacement of the existing pipeline that provides water to the Luce property but is located on the subject property. This dispute must be resolved between those parties before engineering plan approval may be granted. If authorized by the resolved dispute (settlement, contract agreement, judgment and decree, or whatever means), the existing pipe on the subject property that conveys water to the existing livestock pond on the southerly abutting property may be *relocated* with the following restrictions:
- The replacement pipe shall be up-sized to convey the 100-year event.
 - The pipe shall bypass all on-site drainage facilities and discharge at the present outlet location.
 - The pipe shall be designed to collect the existing upstream flows and shall be located in a manner consistent with both the dispute resolution and

County design requirements.

If the dispute resolution does not permit these measures to be taken, then the proposed plat shall be redesigned appropriately.

- I. A Class III wetland exists in the vicinity of proposed lot no. 15 (in the northeast quadrant of the subject property). The Applicant proposes to fill that wetland. The wetland is located at/near the upgradient end of a pipe for which the southerly abutting property owner (Luce) asserts water rights. The southerly abutting property owner (the Appellant) also asserts a right by Superior Court decree to use the pipe for water collection and conveyance. Neither the wetland (and its buffer) nor the “pipeline” may be altered in any manner absent a resolution of this conflict between the proposed plat design and the asserted rights of Appellants Luce (See also Conditions 7.E, 7.H 7.J and 7.K).
- J. The southerly abutting property owner (Luce) asserts a pipeline (drainage) *easement* extending from the Class III wetland to the western pond located immediately south of the abutting property (the Luce property). This disputed easement claim must be resolved prior to engineering review approval (see also conditions 7.E, 7.H, 7.I and 7.K).
- K. Although the southerly abutting property owner (Luce) asserts water rights (State issued or approved) and although the Department (DDES) and the Applicant do not contest those water rights, the preliminary plat design appears to contradict the Luce assertions of water rights in these ways:
 - No obvious protection to the existing pipeline or to the (claimed but not necessarily proven) easement.
 - No protection to the natural storage and water cleansing functions of the Class III wetlands. It may very well be that, from an overall water quality standpoint, the Department's recommendation is superior to the solution sought by the Luces. However, the Luces hold a water rights certificate and court decree which suggest that their approval might be required before the wetland and pipe can be altered.

These design features may not appear in the plat design approved through engineering review unless these disputed issues of water right, pipeline easement, water source protection and Class III wetland protection are resolved to the satisfaction of the Luces or their heirs or assigns, or by Court order.

8. The following road improvements are required for this subdivision to be constructed according to the 1993 King County Road Standards.
 - A. Per KCRS 1.03, that portion of the west half of Military Road South adjoining the subject property shall be improved to an urban principle arterial standard with provisions for bikeways per KCRS section 3.10.
 - B. Tract B shall be designed as a joint-use driveway tract for the purpose of serving proposed lots 13 and 14. The tract shall be an undivided ownership to the lots it

serves, and the lot owners shall be responsible for its maintenance. The tract shall be 20 feet wide with an 18-foot-wide paved surface with controlled drainage.

- C. South 377th Place shall be constructed to full-width urban subcollector standards from Military Road South to 33rd Avenue South. Right-of way shall extend from South 33rd to the west property boundary.
 - D. Minimum property line radii of 25-feet and turning radii of 35-feet shall be provided at the intersection of Military Road South and South 377th Place in accordance with Section 2.10 KCRS.
 - E. The access to proposed lots 5 and 6 shall be constructed to joint-use driveway standards within the dedicated right-of-way.
 - F. South 376th Place, 33rd Avenue South, and 34th Avenue South shall be constructed to urban subaccess standards. Said roads shall be located within dedicated right-of-way.
 - G. The proposed road improvements shall address the requirements for road surfacing outlined in KCRS Chapter 4. As noted in section 4.01F, full width pavement overlay is required where widening existing asphalt.
 - H. Street illumination shall be provided at intersections with arterials in accordance with KCRS 5.05.
 - I. Military Road South is designated as a principal arterial street, which may require designs for bus zones and turnouts. As specified in KCRS 2.16, the designer shall contact Metro and the local school district to determine specific requirements.
 - J. Modifications to the above road conditions may be considered by King County pursuant to the variance procedures in KCRS 1.08.
9. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
- The applicant or subsequent owner shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The applicant has the option to either: (1) pay the MPS fee at final plat recording, or (2) pay the MPS fee at the time of building permit issuance. If the first option is chosen, the fee paid shall be the fee in effect at the time of plat application and a note shall be placed on the face of the plat that reads, "All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid." If the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.
10. Lots within this subdivision are subject to King County Code 21A.43, which imposes impact fees

to fund school system improvements needed to serve new development. As a condition of final approval, fifty percent (50%) of the impact fees due for the plat shall be assessed and collected immediately prior to recording, using the fee schedules in effect when the plat receives final approval. The balance of the assessed fee shall be allocated evenly to the dwelling units in the plat and shall be collected prior to building permit issuance.

11. There shall be no direct vehicular access to or from Military Road from those lots which abut it. A note to this effect shall appear on the engineering plans and final plat.
12. Suitable recreation space shall be provided consistent with the requirements of KCC 21A.14.180 and KCC 21A.14.190 (i.e., sport court[s], children's play equipment, picnic table[s], benches, etc.).
 - A. An overall conceptual recreation space plan shall be submitted for review and approval by DDES, with the submittal of the engineering plans. This plan shall include location, area calculations, dimensions, and general improvements. The approved engineering plans shall be consistent with the overall conceptual plan.
 - B. A detailed recreation space plan (i.e., landscape specs, equipment specs, etc.) consistent with the overall conceptual plan, as detailed in item a., shall be submitted for review and approval by DDES and King County Parks prior to or concurrent with the submittal of the final plat documents.
 - C. A performance bond for recreation space improvements shall be posted prior to recording of the plat.
13. A homeowners' association or other workable organization shall be established to the satisfaction of DDES which provides for the ownership and continued maintenance of the recreation area.
14. Street trees shall be provided as follows:
 - A. Trees shall be planted at a rate of one tree for every 40 feet of frontage along Military Road. Spacing may be modified to accommodate sight distance requirements for driveways and intersections.
 - B. Trees shall be located within the street right-of-way and planted in accordance with Drawing No. 5-009 of the 1993 King County Road Standards, unless King County Department of Transportation determines that trees should not be located in the street right-of-way.
 - C. If King County determines that the required street trees should not be located within the right-of-way, they shall be located no more than 20 feet from the street right-of-way line.

- D. The trees shall be owned and maintained by the abutting lot owners *or* the homeowners association or other workable organization unless the County has adopted a maintenance program. This shall be noted on the face of the final recorded plat.
 - E. The species of trees shall be approved by DDES if located within the right-of-way, and shall not include poplar, cottonwood, soft maples, gum, any fruit-bearing trees, or any other tree or shrub whose roots are likely to obstruct sanitary or storm sewers, or that is not compatible with overhead utility lines.
 - F. The applicant shall submit a street tree plan and bond quantity sheet for review and approval by DDES prior to engineering plan approval.
 - G. The applicant shall contact Metro Service Planning at 684-1622 to determine if Military Road is on a bus route. If Military Road is a bus route, the street tree plan shall also be reviewed by Metro.
 - H. The street trees must be installed and inspected, or a performance bond posted prior to recording of the plat. If a performance bond is posted, the street trees must be installed and inspected within one year of recording of the plat. At the time of inspection, if the trees are found to be installed per the approved plan, a maintenance bond must be submitted or the performance bond replaced with a maintenance bond, and held for one year. After one year, the maintenance bond may be released after DDES has completed a second inspection and determined that the trees have been kept healthy and thriving.
15. A \$538 landscape inspection fee shall also be submitted prior to plat recording. The inspection fee is subject to change based on the current County fees.

ORDERED this 31st day of July, 1998.

R. S. Titus, Deputy
King County Hearing Examiner

TRANSMITTED this 31st day of July, 1998, to the parties and interested persons on the attached list.

NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$125.00 (check payable to King County Office of Finance) **on or before August 14, 1998**. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council **on or before August 21, 1998**. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 403, King County Courthouse, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

MINUTES OF THE JULY 23, 1998 PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L97P0043 -- LAZY B & W RANCHETTES, SEPA AND PLAT COMBINED HEARING:

R.S. Titus was the Hearing Examiner in this matter. Participating in the hearing were Gary Kohler, Jim Chan, Larry West, Rhys Sterling, Bruce Kvam, Stuart Scheuerman, Brad Biggerstaff, and James Zeller.

The following exhibits were offered and entered into the record:

- Exhibit No. 1 Department of Development and Environmental Services File No. L97P0043
- Exhibit No. 2 Department of Development and Environmental Services Preliminary Report to the Hearing Examiner for the July 23, 1998 public hearing
- Exhibit No. 3 Application, dated October 14, 1997
- Exhibit No. 4 Environmental Checklist, dated October 14, 1997
- Exhibit No. 5 Declaration of Non-Significance, dated May 12, 1998
- Exhibit No. 6 Affidavit of Posting indicating November 29, 1997 as date of posting and December 4, 1997 as date affidavit was received by DDES
- Exhibit No. 7 Preliminary plat drawing dated December 23, 1997
- Exhibit No. 8 Land Use Maps 753W and 752E
- Exhibit No. 9 Assessor's Maps SW & NW 34-21-04 and NE & SE 33-21-04
- Exhibit No. 10 Level 1 Drainage Analysis received October 14, 1997
- Exhibit No. 11 Wetland and Stream Report, received October 14, 1997
- Exhibit No. 12 Stormwater Infiltration, received December 11, 1997
- Exhibit No. 13 Appellant Luce Exhibits:
 - 13-1 Certificate of Surface Water Right issued January 19, 1959 and Water Right Claim forms filed by Luce family with Washington State Department of Ecology in 1974
 - 13-2 Judgment and Decree of Appropriation, entered in King County Superior Court on July 21, 1959 in the matter of State of Washington v. Morton, et. al, No. 533566.
 - 13-3 Letter dated April 13, 1972 from Washington State Highway Department to Mr. H.E. Luce re: Jovita Pitsite, A-203, and accompanying property sketch
 - 13-4 Quit Claim Deed from State of Washington to Wally Etsekson, recorded under Recording No. 7809071047
 - 13-5 Letter dated October 4, 1996 from Craig D. Thielbar to the Personal Representative/Executor of the Estate of Wally Etsekson
 - 13-6 Drawing depicting local drainage and existing water collection infrastructure of Luce water system
 - 13-7 Tables 4-1 and 4-2 from government publication entitled "Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters," EPA - 840-

- 13-93-001C (January 1993)
- 13-8 Tables 4-4 and 4-6 from same publication as Exhibit No. 13-7
- 13-9 Excerpt from Chapter IV-1 of the government publication entitled "Stormwater Management Manual for the Puget Sound Basin," Washington State Department of Ecology (February 1992), including Table IV-1.1
- 13-10 Table 1 from Appendix C, Part 3, of the DEIS prepared for the Trossachs, Belvedere Park and Brighton's Landing developments (1993)
- 13-11 Publication entitled "Livestock Water Quality," G79-457-A, Co-Op Extension, Institute of Agriculture and Natural Resources, University of Nebraska-Lincoln, by Paul Guyer, March 1980
- 13-12 Copy of letter dated July 13, 1985 from Stanley E. Luce to King County Building and Land Division re: the existing water pipeline easement
- 13-13 Riipinen Surveying's survey of the water pipeline and easement, and portions of Luce property
- 13-14 Copy of color photos taken July 4, 1998 of the water pipeline inlet and outlet, the Farm Pond, and the beef cattle grazing on Luce property near the Farm Pond
- 13-15A Cover letter dated June 29, 1998 from Charlotte Kirk Baer (Board of Agriculture, National Resource Council) to Rhys Sterling
- 13-15B Excerpts from "Nutrient Requirements of Horses," National Research Council (5th revised edition, 1989)
- 13-15C Excerpts from "Nutrient Requirements of Beef Cattle," National Research Council (7th revised edition, 1996)
- 13-15D Excerpts from "Nutrient Requirements of Swine," National Research Council (10th revised edition, 1998)
- 13-15E "Nutrients and Toxic Substances in Water for Livestock and Poultry," National Academy of Sciences (1974)
- 13-16 Initial report by Beak Environmental Specialists re: water quality and quantity impacts
- 13-17 Affidavit of Rory L. Luce
- 13-18 Affidavit of Lynne B. Luce
- 13-19 Affidavit of Rhys A. Sterling
- Exhibit No. 14 Amtest Labs Water Analysis for Luce stock pond
- Exhibit No. 15 Applicant's Exhibits:
 - 15-1 Notice of Water Right Application No. 14970, August 14, 1958
 - 15-2 Permit to Appropriate Public Waters, August 6, 1958
 - 15-3 Report of Examination, October 14, 1958
 - 15-4 Certificate of Surface Water Right, January 19, 1959
 - 15-5 Water Right Claim by Stanley E. Luce
 - 15-6 Judgment and Decree of Appropriation, King County Superior Court No. 533566
 - 15-7 Letter dated April 13, 1972 to H.E. Luce from Washington State Highway Department
 - 15-8 Deed to Luce original land, Vol. No. 3965, Page 89
 - 15-9 King County Sundry Site Plans with subject area circled in red
 - 15-10 Real Estate Contract for Happy Valley Land Co.
 - 15-11 Quit Claim Deed
 - 15-12 Statutory Warranty Deed, August 10, 1978
 - 15-13 Statutory Warranty Deed, January 30, 1996
 - 15-14 Quit Claim Deed on Luce's two parcels, 1989
 - 15-15 Letter dated May 31, 1996 to Lynne and Rory Luce from King County Land Use Services Division
 - 15-16 Memo dated May 31, 1996 to Al Martin, King County Assessor's Office, from Raymond Florent, Land Use Services Division
- Exhibit No. 16 Revised Level 1 Drainage Analysis
- Exhibit No. 17 DDES/LUSD Situs File Information, October 14, 1997

Exhibit No. 18 Soils Log and Test Pit Location Map

RST:vam / gb
Attachment
plats\l97p\l97p0043 rpt